REMARKS

The application has been amended. Claim 26 has been amended. Reconsideration of the application is respectfully requested.

Initially, it is noted that the Examiner has clarified the numbering of the present claims. The Examiner has renumbered the presently pending claims as 26-37. Undersigned counsel wishes to thank the Examiner for this clarification and applicant therefore adopts the Examiner's renumbering.

Independent claim 26 is rejected under 35 U.S.C. §112, first paragraph, the Examiner contends that claims 26 fails to comply with the written description requirement and is not enabled. This determination is respectfully traversed. However, in an effort to advance to prosecution of the present application, independent claim 26 has been amended to more closely track the language of the specification.

In accordance with the Examiner's suggestion, the claim now recites that the stent includes a plurality of nested wire waves where the wire waves inhibit tissue ingrowth between the waves. This language is fully supported by the specification. Moreover, one skilled in the intraluminal stent art fully appreciates what is meant by an inhibiting tissue ingrowth through a

stent. Therefore, it is respectfully submitted that claim 26 both complies with the written description requirement and is enabled by the specification. Reconsideration of the application is respectfully requested.

Independent claim 26 stands rejected under 35 U.S.C. §102(b) as being anticipated by or in the alternative under 35 U.S.C. §103 as being obvious over U.S. Patent No. 2,780,274 to Roberts. This determination is respectfully traversed.

It is initially noted that the Roberts reference cited by the Examiner is directed to a flexible corrugated hose for use in internal combustion cooling systems. Clearly, this reference is not in an analogous art area and therefore does not qualify as prior art to the claimed invention. The reference cited by the Examiner is neither in the same field of endeavor, nor is it reasonably pertinent to the particular problems with which the inventor is involved.

The present invention is directed to an intraluminal device including a tubular stent and a cover where the combination inhibits tissue ingrowth therethrough. One skilled in the art of medical devices looking to inhibit tissue ingrowth through intraluminal devices would not resort to automobile radiator hoses for a solution.

Accordingly, the Roberts reference does not constitute prior art which may be applied against the claims of the present invention and therefore cannot be used in rejecting the claims under 35 U.S.C. §102 and/or 35 U.S.C. §103. Reconsideration is respectfully requested.

Notwithstanding the above argument, even if one were to consider the Roberts reference as a prior art reference to the claims of the present application, the Roberts reference does not anticipate nor render obvious independent claim 36.

Roberts shows a flexible corrugated hose. The hose includes a band of hard resilient material 23 which is formed into a spring wire having a zig zag or sinusoidal pattern. Spring wire 24 is shown in Figure 10 and shown in the combination in Figure 13. The spring is used within a sleeve of rubber forming the flexible corrugated hose.

Claim 26 of the present invention recites an elongate tubular stent formed of wire defining a plurality of nested wire waves. Nowhere in the Roberts reference is there any disclosure of nested wire waves. One single spring wire formed in a sinusoidal pattern is shown

in Roberts. There is no clear disclosure, teaching or suggestion of forming a wire to define a plurality of nested wire waves.

Moreover, claim 26 recites a cover extending along the length of the stent which inhibits tissue ingrowth therethrough. Roberts discloses a rubber hose. Nothing is penetrable through the body of the rubber hose. Therefore, in any reasonable interpretation, the hose cannot be said to inhibit the tissue ingrowth, for by its very definition "inhibits" implies that some ingrowth therethrough is possible. Accordingly, even if Roberts is applicable against the claims of the present application, which is it not, Roberts fails to anticipate or render obvious claim 26. Therefore, claim 26 as well as the claims which depend therefrom are believed to patentably distinct over Roberts. Reconsideration is respectfully requested.

Independent claim 26 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,517,570 to Lau et al. This determination is respectfully traversed.

Having overcome the Examiner's rejections under 35 U.S.C. §112, first paragraph, as set forth above, it is respectfully submitted that the claims enjoy the benefit of the earlier filing date and that therefore priority is established beyond the effective filing date of Lau. As such, Lau cannot be an effective reference against the claims.

Having removed Lau as reference against the claims, and having overcome the Examiner's rejection with respect to Roberts, it is respectfully submitted that claim 26 is patentably distinct over the art of record.

The Examiner has also rejected claims 26-38 on the ground of non-statutory type obviousness-type double patenting as being unpatentable over claims 1-10, 18, 26, 29, 32, 72, 81 of U.S. Patent No. 6,319,277, and on the ground of non-statutory type obviousness-type double patenting as being unpatentable over claims 1 and 10 of U.S. Patent No. 5,575,816. Subject to the approval of the Examiner, and upon obtaining otherwise allowable claims, applicant will file a timely Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) or 1.321(d) to overcome the rejection.

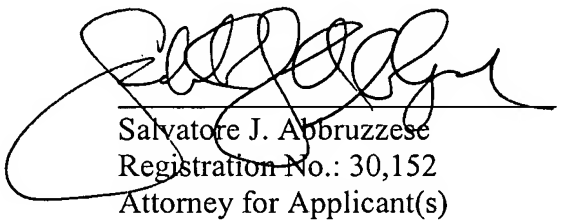
Having now responded in full to the present Office Action, it is respectfully submitted that the application, including claims 26-28 is in condition for allowance. Favorable action thereon is respectfully solicited.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any,

under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions regarding this response, the undersigned would be pleased to address them by telephone.

Respectfully submitted,



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